

W. H. G. father

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest Against Cancellation of IFB]

FILE: B-200126

DATE: February 19, 1981

MATTER OF: Custom Marine, Inc.

DIGEST:

Bids submitted by large businesses on prior procurements may be used in determining reasonableness of small business bid. Since small business bid was 28 percent greater than recent large business bid, GAO cannot conclude that set-aside was arbitrarily canceled.

Invitation for bids No. NOO104-80-B-0799, a 100-percent small business set-aside, was issued on May 7, 1980, by the Naval Ships Parts Control Center for the purchase of 35 ball and seat assemblies (NSN 1H 4820-00-935-1575 QA). The invitation was sent initially to 12 firms and later to 11 more firms as a result of write-in requests. Three bidders submitted the following unit prices by the June 9 bid opening date:

Custom Marine, Inc.	\$3,650
P. J. Hydraulics, Inc.	3,885
Portland Valve, Inc.	5,450

The contracting officer canceled the invitation after determining the low bidder's price to be unreasonable.

Custom Marine protests the cancellation on the basis that its price was fair and reasonable and contends that the contracting officer improperly used the small business set-aside in this instance merely as a vehicle for testing the market. We deny the protest.

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The determination in February 1980 to set this procurement aside for small business, reviewed and concurred in by the Small Business Administration representative in March, was based on a Government-estimated procurement cost of \$42,310, or approximately \$1,209 per unit. The Custom Marine price of \$3,650 was found unreasonable in view of the procurement history, and because final payments under any contract might be even higher due to the economic price adjustment clause (this permitted increases or decreases in the item price for changes in the cost of titanium during the contract performance period) which was permissibly part of the Custom Marine bid--such a clause had permitted increases in prices of approximately 4-10 percent on certain past Custom Marine contracts for similar items.

The determination of unreasonableness was further based upon the fact that a contract for 15 of these items had been awarded to Morland Valve in April 1980 at a unit price of \$2,841. It was the conclusion of the contracting officer that a study of the cost increases for titanium from April to June of 1980 did not support the increase in price (above the Morland Valve price) of 28 percent (\$2,841 to \$3,650) that an award to Custom Marine would necessitate.

Custom Marine contends that the cogent reason (price unreasonableness) chosen by the contracting officer as a basis for the cancellation is not justified. It states that the procurement history used by the contracting officer represents pricing which is outdated and misrepresentative of the situation existing today. Custom Marine contends that the "procurement" history (two procurement actions) of the last 2 years and the competitive small business participation in that history are far more indicative of the present pricing situation. That history is as follows:

<u>Bidder</u>	<u>Unit Quantity</u>	<u>Unit Price</u>	<u>Invitation Issuance Date</u>
Portland Valve (large business)	25	\$2,730	October 1978
Custom Marine, Inc. (small business)	25	2,740	October 1978
Morland Valve (large business)	15	2,841	February 1980
Custom Marine, Inc. (small business)	15	3,650	February 1980
P. J. Hydraulics, Inc. (small business)	15	4,473	February 1980

Custom Marine states that the first invitation (October 1978) was canceled in February 1979 on the ground that the Government no longer needed the items, and that the second competition resulted in the Morland Valve award cited above.

Concerning the "28 percent" logic of the contracting officer, Custom Marine notes that Morland Valve, a large business bidder, is better able to absorb cost increases and to manufacture products at lower cost than its small business competitors. Custom Marine further states that its price is not out of line with the prices of its small business competitors and is the same price it bid in February 1980, and that the contracting officer's reasoning undermines the purposes for which the setting aside of procurements for small businesses were meant.

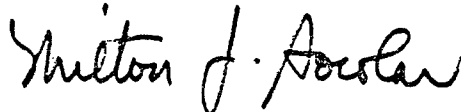
While we question the reasonableness of the Navy's price estimate for this procurement, we cannot question the decision to cancel the procurement in view of the 28-percent increase in price over a recent large business bid. An award may be made on a small business set-aside at a price above that obtainable on the open market from large business firms, but an unreasonable price may not be paid. Society Brand, Inc., et al., 55 Comp. Gen. 475 (1975), 75-2 CPD 327. Although reasonable persons might differ as to the "reasonableness" of the Custom Marine bid price under the invitation, we are unable to conclude that the contracting officer arbitrarily canceled the procurement in view

of the recent lower priced award to Morland Valve. We have repeatedly held that bids submitted by large businesses on past procurements may be used in determining the reasonableness of a small business bid. As we said in B-145376, June 21, 1961 (cited in 49 Comp. Gen. 740, 743 (1970)):

"We are not aware of any [statutory or regulatory] restriction on a procuring agency as to the factors to be considered in determining whether the small business set-aside should be withdrawn * * *."

Specifically, we have upheld the cancellation of a small business set-aside where the small business bid was about 17 percent higher than a prior price offered by a large business. North American Signal Company, B-190972, May 19, 1978, 78-1 CPD 387. Moreover, we find no merit in Custom's contention that there was an improper use of the set-aside procedure for testing the market.

The protest is denied.



For the Comptroller General
of the United States